

On September 5, 2002 appellant, then a 37-year-old special agent, filed a traumatic injury claim alleging that on July 18, 2002 he sustained a whiplash-type injury and aggravation of herniated discs when he was involved in a motor vehicle accident while driving a government

vehicle. He did not stop work. On November 29, 2002 the Office accepted that appellant sustained an employment-related cervical sprain.

Appellant filed a recurrence claim on April 15, 2009, stating that he had continually had symptoms from the employment injury that had worsened causing restrictions to his work activities.¹ He did not stop work. In letters dated July 9, 2009, the Office accepted the additional condition of aggravation of preexisting cervical degeneration at C6-7 and advised appellant that his case was open for medical treatment for his work-related condition. By letter dated August 5, 2009, it advised him of the evidence needed to support his recurrence claim. In an August 17, 2009 statement, appellant reported that his symptoms had worsened over time, with frequent headaches, and neck and shoulder soreness, stiffness and burning.

In reports dated October 21, 2004 and October 2, 2005, Dr. R. Miller, an employing establishment physician, found that appellant was medically qualified for duty. Appellant had a history of herniated discs that at times caused symptoms. In a March 16, 2009 report, Dr. John T. Friedland, a Board-certified orthopedic surgeon, noted a history that appellant was in a motor vehicle accident 10 years prior with increasing symptoms of headaches and tingling, soreness and stiffness in the neck and shoulders. He reviewed a 1999 magnetic resonance imaging (MRI) scan, noting significant degenerative changes at C5-6 and C6-7. Dr. Friedland provided physical examination findings and diagnosed cervicgia and cervical degenerative disc disease at C5-6 and C6-7. He recommended a repeat MRI scan study. A May 8, 2009 MRI scan of the cervical spine demonstrated moderate spinal stenosis at C6-7 and significant indentation on the anterior thecal sac at C5-6. On May 19, 2009 Dr. Friedland noted his review of the MRI scan study and diagnosed cervical degenerative disc disease. In a July 23, 2009 report, Dr. Richard T. Holt, Board-certified in orthopedic surgery, noted appellant's complaint of neck pain and pain, numbness and tingling into the upper back and both shoulder with a history of two work incidents. Physical examination findings included decreased neck range of motion. Dr. Holt advised that conservative treatment versus surgery was discussed.

By decision dated September 9, 2009, the Office denied appellant's claim for a recurrence of medical condition on the grounds that the medical evidence of record was insufficient to establish a causal relationship between the cervical degenerative disc disease and the July 18, 2002 employment injury. It also found that medical treatment was not authorized.

On September 22, 2009 appellant requested a hearing. In reports dated October 6 and 27, 2009, Dr. Holt advised that appellant had an injury in 1998 that caused changes at C5-6 and C6-7, and another injury in 2002 when he was in a motor vehicle accident and continued to work despite discomfort. He advised that the onset of appellant's pain and the imaging changes were caused by the motor vehicle accidents.

At the hearing held on November 24, 2009, appellant stated that he was only claiming medical treatment and was not seeking wage-loss compensation. He testified that he had two accepted motor vehicle accidents, one on January 4, 1999 adjudicated under Office file number xxxxxx556, and the instant claim for the motor vehicle accident on July 18, 2002. Appellant's

¹ At the time appellant filed the recurrence claim, he was employed by the inspector general's service of the U.S. Postal Service.

symptoms gradually worsened over the years and reached a critical point in 2009 when he sought treatment and described his recent medical care with Dr. Friedland and Dr. Holt.

By decision dated January 19, 2010, an Office hearing representative affirmed the September 9, 2009 decision, finding that the medical evidence was insufficient to support that appellant's current condition was causally related to the July 18, 2002 employment injury.

LEGAL PRECEDENT

Section 10.5(x) of Office regulations provide that a recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."² Section 10.5(y) states that a recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁴

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud.⁵ It is well established that, once the Office accepts the claim, it has the burden of justifying the termination or modification of compensation benefits.⁶ The Office's burden of justifying termination or modification of compensation holds true where it later decides that it has erroneously accepted a claim of compensation. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁷

ANALYSIS

On November 29, 2009 the Office accepted that appellant sustained an employment-related cervical sprain when he was involved in a motor vehicle accident on July 18, 2002.

² 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

³ *Id.* at § 10.5(y); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁴ *T.P.*, 58 ECAB 524 (2007).

⁵ *L.C.*, 58 ECAB 493 (2007).

⁶ *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

⁷ *See Amelia S. Jefferson*, 57 ECAB 183 (2005); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

Appellant filed a recurrence claim on April 15, 2009. On July 9, 2009 the Office accepted that he sustained an aggravation of preexisting degeneration of cervical intervertebral disc at C6-7 and advised him that his case was currently open for medical treatment for his work-related condition. It subsequently denied appellant's recurrence claim on September 9, 2009 on the grounds that the medical evidence was insufficient to establish a recurrence of a medical condition. This decision was affirmed by an Office hearing representative on January 19, 2010. Appellant testified at the hearing that he was first injured in an employment-related motor vehicle accident on January 4, 1999, sustaining two herniated discs, and was only seeking medical treatment at the time of the hearing, not disability compensation.

The Office did not identify either of its decisions denying appellant's recurrence of medical condition as a termination or rescission; however, the Office accepted that appellant sustained both a cervical sprain and aggravation of a preexisting degenerative disc disease at C6-7. Dr. Friedland and Dr. Holt reviewed recent MRI scan findings and diagnosed cervical degenerative disc disease, with residual complaints. To terminate authorization for medical treatment, the Office bears the burden to establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸ In this case, it did not present evidence or argument to support termination of medical benefits or rescission of the accepted condition. Rather, the Office shifted the burden of proof to appellant to establish a recurrence of medical condition after he filed his recurrence claim on April 15, 2009. This is not consistent with the July 9, 2009 decision that accepted aggravation of preexisting cervical degenerative disc disease. Consequently, the Office did not properly terminate appellant's entitlement to medical benefits or rescind the newly accepted condition.

CONCLUSION

The Board finds that the Office did not properly terminate authorization for medical benefits in this case.

⁸ *T.P.*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2010 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 14, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board